
# Submission by Free TV Australia

## Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020

**Economics Legislation Committee**

January 2021

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## 1. Executive Summary

- Free TV and its members support the *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020,* subject to some important amendments set out in this submission. This is a crucial Bill as it sets the foundation for good faith negotiations between registered news media businesses and the digital platforms of Google and Facebook, including for fair payment for the news content that is relied upon by millions of Australians.
- The Bill is consistent with the recommendations of the Australian Competition and Consumer Commission (ACCC) following their forensic examination on the impact that the digital platforms have had and continue to have on investment in high quality news content. The Code draws upon tested and well understood regulatory models, with appropriate amendments to ensure that they are fit for purpose in addressing the size of the challenge of attempting to bargain with companies of the scale and market power of Google and Facebook.
- In order for the Bill to meet this challenge, there are several important recommendations that the committee should make:
    - **Instagram must be covered** alongside Facebook News Feed (including Groups, Pages and Stories of both services), Facebook News Tab (when launched in Australia), Google search, Google Discover and Google News. With the services of Facebook's Instagram and News feed so closely linked, applying different remuneration models (or not having a remuneration model at all, as is currently the case) would create perverse avoidance incentives for the platforms.
    - **The content test must be amended to ensure equivalence of treatment between traditional print mastheads and TV broadcasters**. The "primary purpose test" should be replaced with a requirement that a news source "regularly includes a material amount of core news content". Further, rather than requiring that every single news source of a news business be registered, all "covered news content" that is created by a registered news business should be included regardless of whether it was listed in the original application.
    - **Non-differentiation provisions must be expanded to protect all content produced by registered news media businesses.** Free TV members' relationships with the platforms includes non-news content distribution through services such as Facebook Watch and Google's YouTube, and as a client for services such as advertising technology (adtech). These relationships can be used to penalise participation in the news Code process.
    - **Platforms must disclose the types of data they collect from users of news content.** The Bill currently contains perverse incentives to withhold all information from registered news media businesses as the requirement to transparently disclose information only operates if this information is already provided to one registered news media business.
    - **Information exchange must occur as part of the bargaining process not just in arbitration.** Currently the information required to enable estimates of the value of news content to the platforms can only be requested once the arbitration process has been initiated, meaning that this data will not be available for the commercial negotiation process, limiting the value of that process.
    - **Final offer arbitration (FOA) must be retained** but the arbitration panel should also explicitly take into account the public benefit of news content. While FOA provides a clear and straightforward deadlock breaking mechanism, the arbitration panel should be given additional guidance in how to take into account the "public good" and the indirect benefit to the platforms of news content.
- With these important changes, we support the urgent passage of the Bill through Parliament. We look forward to the opportunity to discuss this submission with the Committee.

# 2. Introduction

## 2.1 About Free TV Australia

Free TV Australia is the peak industry body for Australia's commercial free-to-air broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial free-to-air television makes to Australia's culture and economy.

Free TV Australia proudly represents all of Australia's commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.

Our members are dedicated to supporting and advancing the important contribution commercial free-to-air television makes to Australia's culture and economy. Australia's commercial free-to-air broadcasters create jobs, provide trusted local news, tell Australian stories, give Australians a voice and nurture Australian talent.

## 2.2 Our members' investment in trusted news content

This Bill is an important part of ensuring that Australians can continue to rely on high quality news and journalistic content.

Commercial TV invests significantly in news, and local journalistic content production is a very important part of our businesses. Free TV members broadcast local news services into every State and Territory in Australia and produce news of specific local significance in around 40 separate markets, including being the only providers of local regional television news services.

Free TV services are underpinned by the Commercial Television Industry Code of Practice, enforced by the ACMA. The Code requires that news programs be presented fairly and impartially, that factual information is presented accurately and ensures that viewpoints included in programming are not misrepresented. Clearly, no such obligation exists for the digital platforms and they will seek to monetise any news content, regardless of its provenance, accuracy or veracity.

In a workably competitive market, news media businesses would be able to negotiate with the digital platforms for a share of the value that they create from making available news content on their platforms. However, given their near monopoly positions, neither Facebook nor Google have needed to make a fair payment for news content.

As we expand on in the next section, this is why a news media bargaining Code is urgently required.

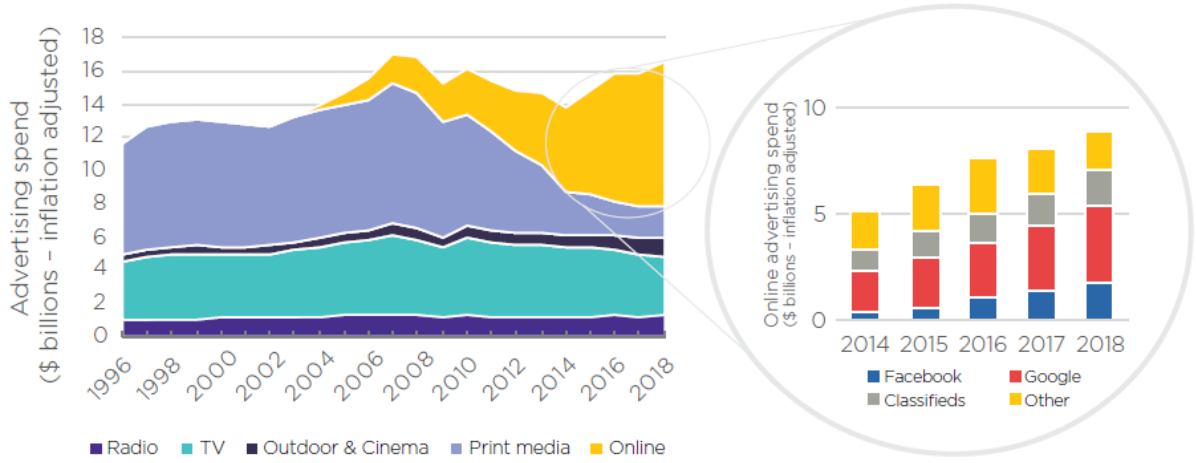
# 3. Why a mandatory bargaining code is urgently required

## 3.1 The platforms undermine investment in high quality news content

The ACCC's Digital Platforms Inquiry (DPI) Final Report set out how, over time, online advertising has become the most significant form of advertising in Australia and how the revenues generated from that advertising are largely directed to the two behemoth digital platforms, Google and Facebook.

In fact, the ACCC's DPI final report noted that, including classifieds, Google and Facebook account for 84 per cent of the growth in the market between 2014 and 2018.[1] The share market expectation is that this growth will continue with the ACCC estimating that as much as 67% of the share price of Google or Facebook is attributable to expected future growth.[2]

*Figure 1: ACCC Analysis of Revenue Impact*




This redirection of advertising revenue towards Google and Facebook has resulted in a steady decline of revenue available to news media companies that invest in high quality news content. While Google and Facebook have continued to benefit from this content by making it available on their platforms, increasing the value of their service offering and using it to attract users (as well as and their data and advertising revenues), there has been no meaningful replacement investment in news content.

Free TV news services can only be funded from advertising revenue.[3] However, the impact that Google and Facebook have had in the advertising market has effectively broken the nexus between investment in content creation and advertising revenue. As explained by ACCC Chair Rod Sims:

> *"It is important to recognise that the digital platforms have not replaced media businesses as creators or producers of news and journalism. If they had, we may simply treat this as an example of creative destruction: innovation and technological change creating a more effective or efficient product.*
>
> *But Google and Facebook are not creating news stories in Australia. Rather they select, curate, evaluate, rank and arrange news stories produced by third parties, disseminating and greatly benefiting from other parties' content."*
>
> - *Rod Sims, ACCC Chair, Melbourne Press Club 13 August 2019*

1 ACCC, DPI Final Report, pg 46
2 Ibid. pg 7
3 Under the Broadcasting Services Act, commercial television broadcasters are expected to primarily generate their income from advertising. See Section 14, *Broadcasting Services Act 1992*(Cth)

As a result, the ACCC found that between 2008 and 2018 there had been a significant reduction in multiple categories of reporting related to public interest journalism.[4] This is a market failure, which is of particular concern given the public benefits that arise from the availability of high quality and accurate news and public interest journalism. It is a key ingredient in enabling Australians to make well informed decisions about matter of public importance – whether in economic, social or political spheres.[5]

This makes the Code crucial. Without immediate action to ensure the sustainability of media businesses, the decline in advertising revenue to fund premium Australian content will continue. The result will be fewer services for Australian consumers, including news, and further pressure on the jobs of thousands of Australians employed by our members.

## 3.2 Platforms are unavoidable trading partners

In its DPI Final Report, the ACCC set out that Google and Facebook are unavoidable trading partners for a significant number of media businesses:

> *"There is a fundamental bargaining power imbalance between media businesses and Google and Facebook that results in media businesses accepting terms of service that are less favourable."*[6]

Google and Facebook are unavoidable trading partners because of their near monopoly positions in their respective markets and their gateway position for access to the online audience. Inevitably, this unprecedented degree of bargaining imbalance leads to Google and Facebook refusing to meaningfully contribute towards to the cost of news content production, despite the significant value that they derive from it.

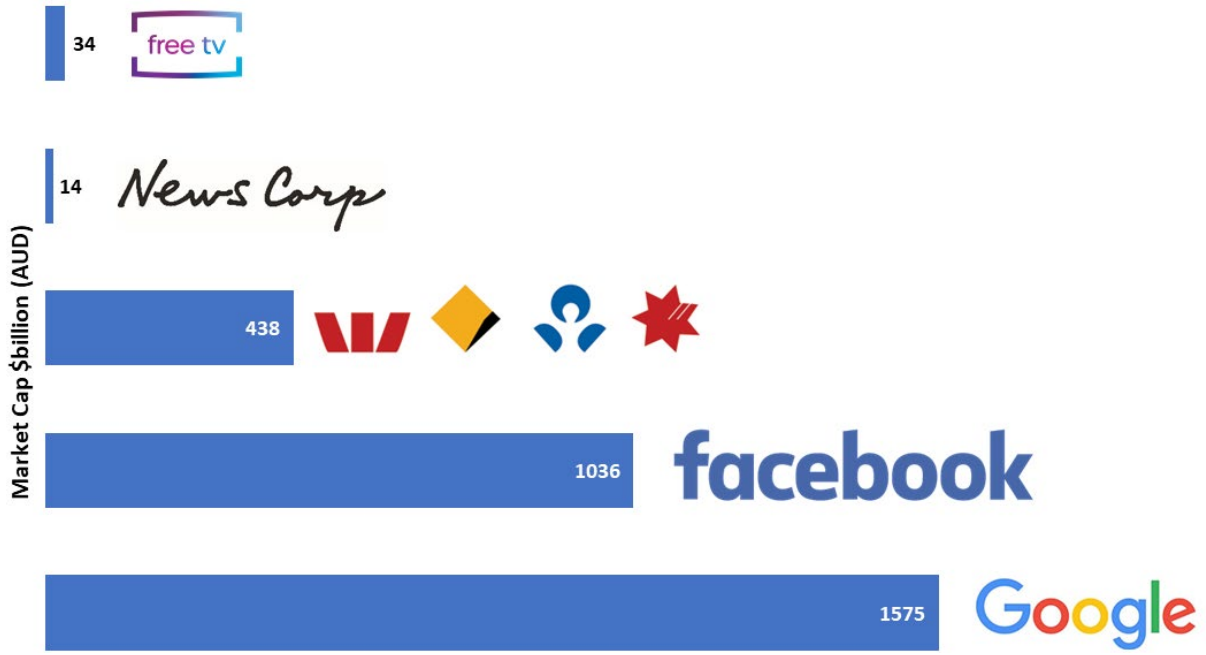
For example, in December 2019, the Government gave Facebook and Google an opportunity to work cooperatively with local news media businesses to ensure fair payment for the news content they make available under a voluntary process. Free TV members, like many news media businesses, entered negotiations with Google and Facebook in good faith, however, it very quickly became clear that neither digital platform would voluntarily enter into agreements to pay for news content in relation to their core service offerings. This has been reinforced by the subsequent public relations campaign by Google in response to the Government's consultation on the draft Bill and subsequent introduction to Parliament.

### 3.2.1 The digital platforms are larger than the ASX200 combined

Examining just one metric—market capitalisation—demonstrates the materiality of the imbalance between Google and Facebook and the news media businesses. As shown below, not only do Facebook and Google dwarf the local news media companies, they are several times larger than even our "Big 4" banks combined. As explained, it is this dominance that has meant neither Google nor Facebook has, to date, needed to negotiate to pay Australian media companies a fair return for their use of the news content produced by those media companies, notwithstanding that the platforms benefit from that use.

4 Ibid, Chapter 6
5 Ibid, pg 280
6 Ibid, pg 206

*Figure 2 Google and Facebook – unprecedented size and scale*




*Source: Yahoo Finance, 16 December 2020 (Free TV includes CBSViacom, SWM, NEC, PRT and SXL) $1US=$1.32UD*

The problem to be addressed becomes clear when you put together the sheer size and scale of these companies, with their unavoidable trading partner positions. What results is an unprecedented imbalance in bargaining position. Neither Google nor Facebook needs to pay a fair price for using the news content of Australian media companies because of this imbalance – and neither platform currently does so. This creates a market failure that will not be resolved without regulatory intervention.

The bargaining imbalance between Google and Facebook on the one hand, and Australian media companies on the other, is further exacerbated by the information asymmetries which exist between the parties. Australian media companies have no way of knowing the extent of the benefits that Google and Facebook obtain from using news content – whether these are direct benefits such as advertising revenue and collection of consumer data or indirect benefits which arise from being able to supply this content to Australian users and retain those users on their monopoly platforms. As Australian media companies do not have this information, it further impairs their ability to bargain effectively with the platforms.

The Code enshrined in the Bill before the Committee is an appropriate intervention, which appropriately focusses on addressing the imbalance described above, while setting the right incentives for commercial negotiation in the first instance, with an efficient deadlock breaking mechanism should the parties not be able to come to commercial terms.

## 3.3 Code will not "break" search

As recently as early January 2021, Google has put forward arguments as to why the Code will "break" search. Google has argued that there is no valid reason why news content should receive preferential treatment by means of the Code as compared to any other content that is accessed via search results, such as a link to a website for a retailer. This simplistic analysis ignores the ACCC's findings and the very concerning market failure described in its DPI Final Report and referred to in this submission.

It also misconstrues how the Code will work in practice. The Code will not prevent the effective ongoing operation and management by Google of its search services or changes to Google's search algorithm. Given the unique nature of the market failure that the Code seeks to address, this regulatory intervention will also not create a precedent for broader economy wide application.

The Google claims must be seen for what they are: an attempt to confuse the debate and scare Australians into thinking that Google search, which has a 95% share of the market for online search services in Australia, is somehow under threat.

### 3.3.1 Google News Showcase does not negate the need to redress the bargaining imbalance

Google suggests that its new service, Google News Showcase, will resolve the issue of payment for news content and accordingly that there is no need for a Code. Google News Showcase is a platform where news businesses could publish and promote their news content, which Google would pay for.

However, the fact that Google is creating a new product that will use news content in a different way to their core Google search product has no bearing on the need to redress the bargaining imbalance between the parties. The offers that Google makes to selected news media businesses are made in the context of the passage of this legislation and expanding moves internationally to ensure that the platforms pay a fair price for their use of news content. The terms and conditions of the Showcase product are still determined by Google, without regulatory oversight, and the imbalance in bargaining position found by the ACCC persists.

To ensure that all registered news media companies are afforded the opportunity to enter commercial bargaining with Google, with an appropriate mechanism to resolve deadlocks, there is still an urgent need for this legislation to be passed.

## 4. Designating all the relevant platform services

**Relevant section**: Section 52E

**Summary:** The Exposure Draft Explanatory Memorandum for the Bill released on 31 July 2020 indicated the Government's intention to designate Facebook News Feed, Instagram and Facebook News Tab; and Google search, Google News and Google Discover. However, subsequent public statements by the Treasurer have indicated the Government's intention to significantly limit the designated digital platform services.

It is proposed that the Treasurer should designate Facebook News Feed (including Facebook Groups and Facebook Pages), Facebook Stories, Instagram (including Instagram Feed and Instagram Stories) and Facebook News Tab (when launched in Australia), Google search, Google Discover and Google News as designated digital platform services.

**At a minimum, Instagram must be included as a designated digital platform service.**

### 4.1 Instagram included in ACCC findings on Facebook market power

As described above, the ACCC has undertaken significant investigative work since 2018 as part of its DPI and its ongoing work for the Digital Platforms Services Inquiry. These inquiries have demonstrated the significant imbalance in bargaining position between Google and Facebook and news media businesses.

Importantly, the ACCC findings in relation to the imbalance in bargaining position were undertaken at the corporate level, rather than being limited to individual services. In other words, Facebook's substantial market power does not arise from the Facebook News Feed service alone, but from the combination of Facebook and Instagram, as shown in the excerpt below.

*ACCC Key Finding – DPI Final Report*

**Key findings**

- Facebook has substantial market power in supplying social media services in Australia, which are provided by its platforms, Facebook and Instagram. Facebook's substantial market power can be expected to persist at least in the short- to medium-term.

*ACCC, Digital Platforms Inquiry Final Report, Page 77*

As a result, Instagram and Facebook News Feed should be treated as one social media offering. Facebook operates these brands in concert to appeal to different markets. This is analogous to Qantas operating both the Qantas and Jetstar brands to appeal to different market segments, while offering the same core service of air travel.

This view is supported by the analysis of the ACCC that, in looking at the services of Facebook, did not distinguish between Facebook and the other services such as Instagram owned by Facebook. For example, the ACCC found that Facebook and Instagram's *combined* share of the online display advertising market in Australia is estimated to be 51 per cent[7] and undertook a combined revenue analysis.

[7] See for example Figure 2 on page 6 and revenue analysis of page 9 of the ACCC's Final DPI Report

The ACCC concluded that large social media platforms such as Facebook a*nd Instagram* have a greater ability to attract users than a smaller scale social media platform. This is because the number of users of a platform directly increases the benefit of that platform to the user (page 9). In other words, both Facebook and Instagram are of the same type of service.

The recent US complaint filed by the Federal Trade Commission (FTC)[8] also highlights the anti-competitive behaviour of Facebook in their acquisition of Instagram and WhatsApp. In particular, the FTC has uncovered evidence illustrating that Facebook's acquisition of users on Instagram and WhatsApp would be more effective than competing. The artificial separation of the platforms does not diminish the market power that Facebook has by owning these assets. By excluding Instagram from being a designated service, Facebook may circumvent the Code by utilising the alternative platform and avoid remunerating news businesses for their content.

Therefore, the only conclusion that may be drawn is that Instagram should be treated in the same manner in the Code as Facebook itself. There is no basis to be found, including in the ACCC's DPI Final Report, for differential treatment.

## 4.2 If Instagram is excluded perverse avoidance incentives will be created

As demonstrated above, Facebook News feed and Instagram are the same type of service and should be treated in the same way under the Code. This is due to the substitutability of the services of Facebook News Feed and Instagram and the related products like Facebook and Instagram Stories.

Failure to include Instagram as a designated digital platform service would create perverse incentives on Facebook to seek to avoid payment for news content by changing its service offerings and terms and conditions to only allow news content to appear on the service that does not require fair payment for news content.

In addition, Facebook Stories, Instagram Stories and Instagram Newsfeed should be included. This is particularly important as Facebook is increasingly relying on Facebook Stories/Instagram Stories and could change its business practices to further rely on those in the event that those services are not designated.

To ensure that these perverse incentives do not arise, the Committee should recommend that the Treasurer should designate the previously announced services as designated digital platform services.

## 4.3 Instagram is an important and growing source of news for Australians

From a consumer perspective, Instagram is increasingly used to access news content. The University of Canberra's 2020 Digital News Report found that 39% of users access news on Facebook – down from 45% in 2016. This fall matched by an increased in Instagram access for news from 3% to 9%.

[8] *Federal Trade Commission v Facebook INC*, US District Court for the District of Columbia (Complaint filed 8 December 2020)

Similarly, The Reuters Institute Digital News Report (2020) found that across the age groups it surveys, use of Instagram for news has doubled since 2018 and looks likely to overtake Twitter over the next year (page 10). On average across 12 surveyed countries (including Australia), the percentage of people across all ages using Instagram for news has grown from 2% in 2014 to 11% in 2020. It is particularly important for reaching younger audiences – for example, in comparable Western markets (i.e. the US and UK), 24-26% of 18-24 year olds used Instagram as a source of coronavirus news.

## 4.4 Validity of designation decision

In making a determination to designate a digital platform, and associated services, the Treasurer must consider whether there is a significant bargaining imbalance between Australian news providers and the group comprised of the digital platform business and all of its related bodies corporate. Further, the Treasurer may consider reports or advice from the ACCC in making the determination. These are appropriate guardrails to ensure that only dominant digital platforms are subject to the Code.

While this is appropriate, we request that, to ensure that there is no uncertainty as to the validity of any determination made by the Treasurer, the Committee recommends that the Bill be amended to include the protection provided by subparagraph (4) of section 52E of the exposure draft of the Bill. This would require the inclusion of the following subparagraph in section 52E of the Bill:

> *The determination is not invalid merely because of a failure by the Minister to comply with subsection (3).*

Equivalent provisions are included in other sections of the Competition and Consumer Act 2010 (Cth) (**CCA**) and other legislation. For example, under the recently introduced consumer data right regime set out in Part IVD of the CCA, the Treasurer may by legislative instrument designate a sector as subject to the consumer data right. In doing so, the Treasurer must take into consideration various factors set out in the relevant sections of Part IVD. Nonetheless, to ensure certainty once the Minister has made a determination, section 56AH provides that a failure to take into account those factors does not invalidate a determination made by the Treasurer.

## 4.5 Recommended changes

The Committee should recommend that:

- **The first designation instrument made by the Treasurer under section 52E includes, at a minimum, Instagram as a designated digital platform service, in addition to Facebook News Feed and Google Search**. It would be appropriate for the Treasurer to also designate Facebook News Feed (including Facebook Groups and Facebook Pages), Facebook Stories, Instagram (including Instagram Feed and Instagram Stories) and Facebook News Tab (when launched in Australia), Google search, Google Discover and Google News as designated digital platform services.
- Section 52E of the Bill is amended to include the following as a subsection (4): *The determination is not invalid merely because of a failure by the Minister to comply with subsection (3).*

## 5. Non-differentiation protections must cover all content and services

**Relevant section**: Division 5

**Summary: In order for bargaining to be effective it is essential that news media businesses can be confident that platforms will not use their market power to retaliate against businesses that seek to exercise their rights to require fair remuneration.** Digital platforms are able to exert commercial pressure on news media businesses in multiple ways, including through discriminatory treatment of non-news content across all platform services (including services that are not designated, for example You Tube), and through the use of other commercial levers such as differential treatment in the provision of advertising technology (**adtech**) services.

Section 52ZC in its current form will not provide appropriate protections for media companies, such as Free TV's members, that make available valuable online content other than covered news content. It is also narrowly limited to crawling, indexing, making available and distributing news content, which weakens the intended protections, given the breadth of services provided by these global platforms.

The Committee should recommend that the restraints applied to the digital platforms under that section are broadened to cover all content as well as digital services beyond those relating to the display of content.

### 5.1 International experience shows that protections are needed

The non-differentiation protection provided by section 52ZC is a critical element of the Code. International experience shows that without this provision the Code would fail. The Spanish experience demonstrates this. In 2014, Spain passed a law that would require news aggregators to pay a licence to use news content. As a result of that law being passed, Google shut down Google News in Spain. In other words, it ceased to provide its primary news aggregation service rather than pay a fee for the use of news content to the media companies that produced it.

Another example is provided by looking to France. In 2019, France was the first country to implement the European Union's new Copyright Directive. The Copyright Directive grants publishers, including media companies, rights to take action in relation to the unauthorised use of their content by online platforms, including news aggregators. Google's immediate response was to issue, in September 2019, a statement that it would remove "snippets", that is the first few lines of text, from news results in Google search in France, unless publishers agreed that it could continue to use those snippets at no cost.[9] It was not until November 2020 that Google, after being ordered to negotiate by France's competition authority, signed its first agreement to make payments for use of news content in France, though deals with many French media companies have not yet been reached.

Given the responses of Google in these other jurisdictions, the Code will only achieve its intended aims if it protects the right of each news organisation to be treated fairly. It is therefore essential that the non-differentiation section provide strong and effective protection, as without it media companies may simply be unable to afford to exercise their rights under the Code.

[9] As described for example in this article: https://9to5google.com/2019/09/25/google-removing-snippets-france/

## 5.2 Television networks are uniquely exposed to punitive responses

The narrow scope of the non-differentiation provision in section 52ZC, as currently drafted, only provides protection only in respect of covered news content of a registered news business and it also only applies in relation to crawling, indexing, making available and distributing that news content.

This limitation leaves TV broadcasters particularly vulnerable to discriminatory conduct. This is because, unlike news businesses such as news mastheads, which primarily produce content that would be considered to be covered news content, Free TV's members produce a wide range of content, including high-quality drama, sporting event coverage and unscripted entertainment programs. While that other content is not covered by the Code, it is also made available by the platforms and so is open to being discriminated against, as much as the news content of Free TV members.

As described in sections 2 and 3, the content produced by Free TV members makes an important societal and cultural contribution to the Australian community. While this broader range of content is not included in the remuneration aspects of the Code, it is very important that our members be protected against punitive responses from either Google or Facebook in respect of all of the content produced by our members.

The digital platforms are also able to discriminate against media businesses in ways that are not directly linked to the display of news content. This is particularly relevant in relation to adtech services. The ACCC is currently undertaking an inquiry into the adtech services markets in Australia. Free TV has no doubt that the ACCC's inquiry will demonstrate the significant market power that both Google and Facebook have in the adtech services markets, including ad serving. Both platforms will be able to use their market power to discriminate against media companies in relation to the provision of those services if the scope of section 52ZC is not broadened. This would have a direct negative impact on the digital advertising revenues of our members (and other media companies) and therefore could be an unacceptable risk to media companies seeking to exercise their right to seek remuneration under the legislation. We recommend to the Committee that this loophole is closed.

## 5.3 Recommended changes

The changes required to section 52ZC to ensure that its scope is appropriate and that it affords the necessary protections to media companies are straightforward and simple to implement, as shown below.

It is recommended to the Committee that it seeks the following changes to section 52ZC of the Bill (changes indicated in mark-up):

**52ZC Digital service to be supplied without differentiating in relation to registered news ~~businesses~~ business corporations**

(1) This section applies if a responsible digital platform corporation for a designated digital platform service, either by itself or together with other corporations, operates, ~~or~~ controls or provides a digital service, ~~(~~whether or not the designated digital platform service~~)~~ and including for the avoidance of doubt digital advertising technology services.

(2) The responsible digital platform corporation must ensure that the supply of the digital service does not, in relation to ~~crawling, indexing, making available and distributing news businesses' covered news content~~ any of the activities to which subsection (3) applies:

(a) differentiate between registered news ~~businesses~~ business corporations, because of any of the following matters:

(i) a bargaining news business representative for a registered news business corporation making a notification under 52ZE(1), or not making such a notification;

(ii) a bargaining news business representative for a registered news business corporation giving a notice under 52ZL(2), or not giving such a notice;

(iii) a registered news business corporation being paid, or not being paid, an amount of remuneration for the making available of the registered news business~~'~~ corporation's covered news content by a designated digital platform service (whether or not the remuneration is paid in accordance with a determination of a panel under section 52ZX));

(iv) a registered news business corporation being the subject of, or not being the subject of, an agreement of a kind described in section 52ZZK or 52ZZL;

(v) a registered news business corporation being the subject of, or not being the subject of, an agreement resulting from the acceptance of an offer of a kind described in section 52ZZM; or

(b) differentiate between registered news ~~businesses~~ business corporations and news ~~businesses~~ business corporations that are not registered news ~~businesses~~ business corporations, because of any of the following matters:

(i) a matter mentioned in subparagraph (a)(i), (ii), (iii), (iv) or (v);

(ii) a news business covered by subsection (~~3~~4) being paid, or not being paid, an amount of remuneration for the making available of the news business' covered news content by a designated digital platform service;

(iii) a news business covered by subsection (~~3~~4) being the subject of, or not being the subject of, an agreement of a kind described in section 52ZZK or 52ZZL;

(iv) a news business covered by subsection (~~3~~4) being the subject of, or not being the subject of, an agreement resulting from the acceptance of an offer of a kind described in section 52ZZM.

(3) Subsection (2) refers to and this subsection applies to the following activities:

(a) crawling, indexing, making available and distributing online any content that any registered news business corporations produce, irrespective of whether this is covered news content; and

(b) the provision of, and the terms of provision of (including availability, pricing and functionality), any digital services including for the avoidance of doubt digital advertising technology services, which are services that provide for, or assist with, the automated buying, selling and delivery of digital display advertising services such as the supply of opportunities to provide advertising that will appear in banners or in videos on a webpage, within a software application on a mobile smart device or in conjunction with social media content.

(4) This subsection covers a news business if:

(a) the news business is not a registered news businesses; and

(b) none of the news sources that comprise the business form part of a registered news business.

# 6. Data collection transparency

**Relevant sections**: Section 52R (minimum standards) and section 52ZT (information requests)

**Summary:** The intent of requiring the platforms to be transparent about the data they collect from the users of news content was to address the inherent information asymmetry between news media businesses and the platforms.

The Bill as introduced fails to meaningfully address this aim, either in the minimum standards provisions or in the requirements for information exchange as part of the arbitration process. Section 52R only requires transparency if the data is already provided to one or more registered news media businesses, creating a perverse incentive to withhold all information from all parties.

Further, only one information request is permitted throughout the arbitration process and under section 52ZT an information request can only be issued at the start of the arbitration process. The result is that this Bill provides no practical resolution to the information asymmetry issues, until the commencement of the arbitration process, at which point a news media business will have 10 days, without any reasonable opportunity to ask questions about the information provided or issue another information request before it is required, to submit its final offer after receiving the requested information from the platform involved in the arbitration.

The Committee should recommend that the Bill be amended to:

- remove the restriction in section 52R that the data must already be provided to one of more registered news media businesses
- move section 52ZT forward in the process such that information requests can be issued at the commencement of the bargaining process.

## 6.1 Transparency around data collection is key to understanding value

The data that the digital platforms collect from users of news content is one of the primary drivers of the value they derive from the availability of news content on their services. As such, transparent disclosure of the types of data (not the data itself) that they collect from users, and an explanation of how the platforms use that data throughout their many businesses is central to determining a fair payment for news content.

The Code aims to increase the transparency of data collection in two ways. First, under the minimum standards in section 52R, the platforms are required to provide lists and explanations of data gained from the interaction of users with covered news content on the digital services. This information would have to be updated annually. However, as explained in the next section, this obligation on the platforms is only enlivened if that data is already provided to one or more registered news media business. Combined with the very limited application of the minimum standards (see section 9 of this submission), it is not considered that this provision will meaningfully increase the transparency of data collection.

The second provision that could enable news media businesses to gain a transparent insight into the data collection practices of the platforms is by using the information request provisions during the bargaining process. However, as explained below, the information requests cannot be issued until the arbitration process commences, meaning the data would not be available for commercial negotiation and could only be considered in a time compressed period just prior to the last date for submitting a final offer.

Taken together, Free TV recommends that the Committee note that the Bill contains insufficient provisions to ensure that the data collection practices of the platforms are sufficiently transparent to support a meaningful commercial negotiation regarding the value created from using the data of news content users.

## 6.2 Explanation of data collection through minimum standards

The exposure draft Bill (section 52M) would have required the disclosure of a range of information related to user data collected through digital platform services. However, following extensive lobbying from the digital platforms, this requirement has been limited in the Bill as introduced to information about interactions of users but *only* where that information is provided to one or more registered news businesses.

The logic for the inclusion of section 52M was to ensure that transparency is provided, which is necessary to allow bargaining and arbitration to occur efficiently. As the "payment" that the platforms receive from user engagement is the collection of data about those users which is then used by the digital platforms to generate advertising revenue for the platforms, a key indicator of the value obtained by the platforms from using covered news content is the consumer data that is collected.

Accordingly, accurate and current information about what consumer data is collected by the platforms is required to enable media businesses to obtain a clear understanding of the commercial benefit that platforms receive from the use of their news content. If media companies have access to this information, it will assist in addressing the bargaining power imbalance between the parties because it will ensure that media businesses bring an informed position to negotiations with each designated platform.

The replacement of the previous section 52M with the new section 52R is made more problematic by the regime for information to be provided during the bargaining and arbitration phases in Divisions 6 and 7, which is discussed further below. During the bargaining phase under Division 6, the media businesses have no separate entitlement to ask a digital platform for any information. A right for either media businesses or platforms to ask for information from the other party only arises during the arbitration phase. Accordingly, if the previous section 52M is not re-inserted, a regime allowing the parties to ask each other for information relevant to the remuneration issue should be included in Division 6.

A final point in relation to the proposed section 52R is that, as the platforms are only required to disclose the nature of the information that they provide to other registered news businesses this creates the incentive for the platforms not to disclose any information to any registered news business at all. If no information is disclosed to any registered news business voluntarily, no information will need to be disclosed under section 52R.

Section 52M from the initial exposure draft of the bill did not require personal information to be disclosed. However, Free TV welcomes the inclusion of section 52ZB which makes it very clear that this is the case.

## 6.3 Information exchange to enable fair bargaining

Section 52ZT enables a bargaining party to issue the other party with an information request notice, subject to a challenge process and the information request being reasonable. As explained in the above sections, these information request provisions are the only effective mechanisms available to news media companies to gain the transparency around data collection and other matters, that will be crucial to the commercial negotiation and arbitration process. Therefore, information requests needs to be the very first step before bargaining has commenced.

However, information requests under section 52ZT fall within the arbitration stage of the process and must be issued within 5 business days after the start of arbitration. Under the timeframes included in the Bill, the other party has 10 business days to provide the information requested (subject to extension to resolve disputes). Final offers are due to the panel a further 10 business days after responses to information requests are required to be provided (regardless of whether the requested information has been provided). As final offers are truly final, that is, they cannot be amended, this means that any response to a request for information would need to be considered in a highly compressed timeframe in order to be taken into consideration in formulating an offer. The restriction on only being able to issue one information request further compounds this issue in circumstances where the information provided may indicate that there is other relevant information held by the digital platform but because it wasn't known at the time of the request, that information couldn't be requested either at the beginning of the arbitration or at a later stage.

In any event, the response to the information request would not be available to inform the commercial negotiations that proceed the final offer arbitration. This would appear likely to frustrate the key policy aim of the Bill to encourage the parties to enter into commercial negotiations and only rely on final offer arbitration as a last resort deadlock breaking mechanism. To address this concern, the information request provisions should be move to the start of the bargaining process.

Further, to avoid unnecessary and protracted disputes it would be useful if guidance were provided in terms of the reasonableness of information requests. In particular we would recommend clarifying that information is able to be requested in relation to all services provided by a digital platform corporation, to the extent that data and monopoly positions are potentially being leveraged across all services. Such information will be critical to enabling media businesses to form a view regarding the indirect benefits obtained from news content.

## 6.4 Trade Secrets provisions could be misused

While Free TV understands that digital platforms should not be required to provide details of the workings of algorithms to minimise the opportunities for third parties to "game the system", as recognised in the ACCC's DPI Final Report, Free TV is concerned that the Bill provides the platforms with a broad ability to refuse to provide information that a platform considers are "trade secrets". The Code does not provide a definition of this term nor enable any independent assessment to be made of whether particular information is a trade secret, suggesting that the platforms may be able to use this right to withhold information that would properly be disclosed if the parties were bargaining on a more equal footing.

To minimise the potential for the misuse of these provisions, we suggest that trade secret is clearly defined. In our view the only matter that should be included in trade secrets is the details of the workings of algorithms. We have suggested that section 52ZA is amended accordingly.

## 6.5 Recommended changes

It is recommended that the Committee seek the following changes to the Bill:

- Section 52R(3) is amended to provide as follows:

  (3) This subsection covers data that relates to interactions of users of the digital platform service with covered news content made available by the digital platform service including an explanation of the categories of data that the digital platform service collects about the registered news business corporation's users through their engagement with covered news content made available by the digital platform service.

- The information request provisions of sections 52ZT, 52ZU and 52ZV, which are currently contained in Division 7, are moved to Division 6, with section 52ZU amended to provide that the ACCC will determine any challenges to the provision of information. This will enable sections 52ZX and 52ZZA, and other sections of Division 7 that deal with timing issues related to the arbitration process, to be simplified.

- The following definition is inserted in section 52A:

  ***trade secret*** means information concerning the manner in which an algorithm operates and the coding for an algorithm.

# 7. Final Offer Arbitration Model

**Relevant section**: Division 7, Subdivision C

**Summary:** Final offer arbitration provides a clear and straightforward process for resolving disputes on the remuneration to be paid to a registered news business corporation for news content. It is designed to limit the incentives for each party to make ambit claims. This is a far more appropriate model than slow and resource intensive traditional arbitration approaches.

However, when choosing between the two final offers, an arbitration panel should be given further guidance on the nature of the benefit to the platforms from making news content available and should take into account the monopoly position of the platforms when considering any benefit to news media businesses from the distribution of news content by the digital platforms.

## 7.1 Final offer arbitration is strongly supported

The final arbitration model is a clear and straightforward mechanism to be used to resolve disputes about payments to be made to registered news business corporations. As this model provides for one of the final offers put forward by a bargaining party to be selected, it will limit the incentives for the parties to make ambit claims and will enable disputes to be resolved quickly.

Although final offer arbitration is a unique approach to use in a regulatory setting, Australia is facing a unique market failure in relation to the provision of public interest journalism. It is a model that should work well to achieve the aims of the Code and is strongly supported by Free TV and its members.

## 7.2 Direct and indirect factors to be considered by an arbitration panel

The Bill provides for four direct factors to be considered by an arbitration panel in determining which final offer to accept. These factors differ from those included in the exposure draft of the Bill.

In looking at registered news businesses, the panel must take into account the benefits a registered news business receives from its content being made available, as well as the costs to the registered news business of producing that content. In looking at a designated digital platform service, the panel must take into account the benefit to the service from using covered news content and also whether a particular remuneration amount would place an "undue burden" on the commercial interests of the service. Free TV has a number of concerns with these provisions, which link back to the underlying rationale for the introduction of the Code.

First, Free TV is concerned that specifically referring to the benefit that news media businesses receive from the digital platforms provides further reward for the platforms for achieving monopoly positions. It is these monopoly positions that create the market failure that the Code is intended to address.

Given their near monopoly positions in their respective markets, news media businesses are reliant on these companies for referral traffic. It is not a practical option for an Australian media company to "opt out" of sharing content via Google or Facebook if that company wishes to ensure its content is accessible to as many Australians as possible.

It is recommended that the Committee seeks the removal of the requirement that a panel consider the benefits to news media businesses to avoid an outcome where the digital platforms continue to inappropriately benefit from their monopoly power.

Secondly, the exposure draft of the Bill expressly included, in relation to the benefits that a designated digital platform service receives from using covered news content, indirect benefits. Indirect benefits were described in section 52ZP(3) of the exposure draft of the Bill to include the so called "halo effect" these services receive. That is, the benefit received by these services from increased usage and positive public perceptions arising from the inclusion of Australian news were expressly required to be taken into consideration. This is a real and substantial benefit that platforms receive from using reputable Australian news content and it is appropriate that it is recognised in the final offer arbitration.

It appears that each panel is still intended to consider the indirect benefits that a designated digital platform service receives from using covered news content, given that reference is made in the Bill to the "benefit (whether monetary or otherwise)" to the service of making the news content available. However, the Bill (unlike the exposure draft) does not expressly state that this important halo effect should be considered. It is recommended that the Committee seek the inclusion in the Bill of these clarification provisions from the exposure draft of the Bill to provide guidance to arbitration panels in undertaking their duties to resolve disputes. This is particularly important if there will be only limited services designated, given the indirect benefits to Facebook (for example) may include benefits which are obtained by its wholly owned service Instagram from usage of data across that group of businesses.

For designated digital platform services, the panel is then required to also take into consideration "whether a particular remuneration amount would place an undue burden on the commercial interests of the designated digital platform service". We are concerned that this is a very broad concept that will potentially allow the digital platforms to argue that a wide range of factors should be considered that are extraneous to determining an appropriate price to be paid for covered news content use.

## 7.3 Recognition of public benefit

The disruption in Australia's media sector has created a market failure that is impacting on the production of quality and reliable news content. This is of particular concern given the public benefits that arise from the provision of high quality and accurate news and public interest journalism. It is a key ingredient in enabling Australians to make well informed decisions about matter of public importance – whether in economic, social or political spheres.[10]

It is this public benefit of access to diverse, high quality and reliable Australian news content that is at the very heart of this legislation. Therefore, the factors that the panel will take into consideration include the public benefits arising from the production of this important form of content. However, Free TV submits that this consideration should be made explicit in the legislation. Such explicit recognition will not result in outcomes that are unfair to the platforms, given the other factors that are also required to be taken into consideration by the panel, but will allow for a recognition of the policy reasons underlying the implementation of the Code.

Given the changes that have been made to the arbitration criteria subsequent to the exposure draft, we are concerned that in the absence of expressly requiring the arbitrator to have regard to public interest benefit of news, the important objectives of this legislation may not be met – as only "undue burden" on the platforms is considered but not the counter veiling consideration of the broader harm to society from inadequate compensation to news producers.

[10] ACCC, DPI Final Report, Pg 280

## 7.4 Recommended changes

It is recommended that the Committee seek the following changes to the Bill:

- The amendment of section 52ZZ(1)(a) as follows:

  (a) the direct and indirect benefits of the registered news business corporation's covered news content to the designated digital platform service;

- Either section 52ZZ(1)(b) or section 52ZZ(1)(d) is deleted.
- The insertion of the following as section 52ZZ(3):

  (3) In considering the matters set out in subsection (1), and without limiting subsection (2), the panel must also consider the public benefit provided to Australians by the production and dissemination of news and the importance of a strong independent media in well-functioning democracy.

- The insertion of the following as section 52ZZ(4):

  (4) In considering the indirect benefit mentioned in paragraph (1)(a), the panel must:

  (a) firstly, consider the total indirect benefit of Australian news to the digital platform service (including increased usage of the digital platform service and public perception benefits arising from the inclusion of Australian news); and

  (b) secondly, consider the extent to which that total indirect benefit is attributable to the registered news business corporation's covered news content.

# 8. Definition of news

**Relevant section**: Section 52A (definitions of "core news content" and "covered news content") and sections 52G and 52N (meeting the content test)

**Summary:** The drafting of the Bill reflects a traditional "print media" focus on mastheads, rather than recognising the reality that many Australians source their news from a wide variety of TV broadcast programming that does not neatly satisfy the "content test" contained in the Bill and which therefore is not able to obtain the benefit of the Code. Amendments are required to treat different types of news businesses equally.

## 8.1 Clarity on the scope of core news content

A media company may only use the provisions of the Code if that company has registered with the Australian Communications and Media Authority (**ACMA**) as a news business corporation and has also registered one or more news businesses. A news business is either a single "news source" or a combination of news sources. News sources include for example newspaper mastheads and television programs and channels. For registration to occur, several tests must be met, including the "content test". The content test as specified in the Bill is that the primary purpose of each news source that is to be registered is to create content that is core news content.

### 8.1.1 Limitations of the primary purpose requirement

The Explanatory Memorandum uses the following example to demonstrate the application of the content test in the context of an online and offline news business:

> *Commercial Broadcast Network (CBN) is a major Australian commercial free-to-air television network. CBN airs a wide variety of programs, including several designated news and current affairs programs. CBN also broadcasts a series of lighter 'infotainment' programs, such as its daily morning show, which includes a short regular news segment.*
>
> *CBN offers a live stream of its television broadcast online. It also runs a popular CBN news website consisting of both original news articles and video clips from across its news programs and its morning show.*
>
> *CBN applies to the ACMA to register a news business under the Code and lists its CBN news website and its designated news and current affairs TV programs as its news sources. CBN decides not to include its daily morning TV show, as it cannot demonstrate that its primary purpose is core news.*
>
> *The CBN news website and the designated news and current affairs TV programs are considered eligible news sources under the content test. Despite CBN choosing not to nominate the broadcast of its daily morning TV show, any video clips from this program that are posted on the CBN news website would be considered to be covered news content.*

This example highlights how television broadcasters are disadvantaged as compared to traditional "print" media. To take a simple example, consider a news source which is a newspaper masthead called "Sydney Local News". Sydney Local News has various different sections – local Sydney and Australian news, business and financial news and international news, but also sport and some infotainment. Nonetheless, because all of the content under the masthead of "Sydney Local News" is considered in the aggregate, Sydney Local News is likely to pass the primary purpose requirement in the content test and receive registration. The difficulty a TV broadcaster has is that its news content is shown on a number of different programs, not only its core news programs. The Explanatory Memorandum provides a typical example of this, as it refers to daily morning shows which include news segments. As each program needs to be considered separately, unlike a news masthead where all of the content under that masthead is considered in aggregate, it is uncertain whether the morning show would meet the primary purpose test.

Therefore it is recommended that the subjective primary purpose test in the Bill is replaced with an objective test, such as "regularly includes a material amount of core news content" to ensure the appropriate equivalence of treatment between traditional mastheads and TV broadcasters. That test would also be consistent with the Explanatory Memorandum, which states: "*The level of core news content a news source publishes may fluctuate over the course of a year taking into account holiday periods and peak news periods such as election cycles. The policy intent is that these variations will not cause a news business to fail the content test.*"

### 8.1.2 Creation and prominence

The primary purpose test refers to the creation of content and also requires the ACMA to take into account the amount of core news content "created" by the news business. Whether content is directly created by a media business or, for example, produced under a subcontracting arrangement, which would be common for TV broadcasters, is irrelevant. The Explanatory Memorandum states that "(i)t is intended that a news source can be considered to have created content even if it commissions or otherwise obtains the content externally". However, that is not provided for in the Bill as it currently stands and the references to creation should be removed from the content test in the Bill.

As a final comment on the content test, section 52N(3)(c), which requires the ACMA to consider the "degree of prominence" given to core news content is, like the primary purpose test itself, subjective and therefore also likely to create uncertainty and confusion. It is therefore recommended that this is removed.

## 8.2 Covered news content

The differential treatment of traditional print media and TV broadcasters becomes even more apparent when covered news content is considered. Although the content test assesses the amount of core news content of a news source for the purposes of the ACMA's registration process, once a news business is registered, the Code applies to all of the "covered news content" of that business. This is a broad concept, including in addition to core news content any content that reports, investigations or explains current issues or events of interest to Australians.

The manner in which TV broadcasters are disadvantaged may be demonstrated by returning to the earlier example of Sydney Local News. From registration as a news business, *all* of the Sydney Local News content will be covered news content, because it is all published under that masthead, and will have the benefit of the bargaining and arbitration provisions of the Code. Take, on the other hand, Channel X. If Channel X registers the Channel X News, then Channel X will obtain the benefit of the bargaining and arbitration provisions *only* for the covered news content of Channel X News, not for news content that would fall within that covered news content definition that may be broadcast as part of a different Channel X program (and made available online as part of a website for that different program). Our recommendation is that, once a news business corporation is registered, all of the covered news content of that registered news business corporation should obtain the benefit of the Code.

## 8.3 Recommended changes

It is recommended that the Committee seek the following changes to the Bill:

- Section 52N is replaced with the following:

  (1) The requirement in this subsection is met in relation to a news business if each news source covered by subsection (2) regularly includes a material amount of core news content.

  (2) This subsection covers a news source if it comprises, whether by itself or together with other news sources, the news business.

  (3) In considering whether the requirement of subsection (1) is met in relation to a news business, take into account the following matters:

  (a) the amount of core news content published by the news source;

  (b) the frequency with which the news source publishes core news content;

  (c) any other relevant matter.

- References throughout the Bill to any "registered news business' covered news content" are replaced with references to any "registered news business ***corporation's*** covered news content" and a new interpretation provision included to make clear that once a news business corporation is registered, the Code applies to all of the covered news content of that corporation. Other consequential amendments would need to be made to reflect this change.

# 9. Minimum standards

**Relevant section**: Subdivision B

**Summary:** The imbalance in bargaining position between digital platforms and news media businesses applies across all platform services and as such **the minimum standards should apply to all platform services** to support an enhanced working relationship across all interactions, including important content distribution platforms like YouTube and Facebook Watch.

The minimum standards should require the platforms to also provide effective **user comment moderation tools** that are necessary to ensure that media businesses are able to comply with their legal obligations and appropriately manage their liability.

## 9.1 Application to all services provide by a digital platform

The purpose of the minimum standards is to support an enhanced and more transparent relationship between the digital platforms and news media companies, despite the significant imbalance in bargaining power between the parties.

Free TV considers that the minimum standards should apply to all services offered by a designated digital platform corporation. This is because the bargaining power imbalance identified by the ACCC in its DPI Final Report related to digital platforms, not a specific limited class of services. We therefore recommend that the Committee seek to amend Division 4 of the Bill to replace the references to designated digital platform service with a broader digital platform service concept, as was contained in the exposure draft of the Bill.

If the services that are included within designated digital platform services are not expanded in the manner set out earlier in this submission (see section 4), this will compound this problem and will mean that the minimum standards have almost no application.

If the concern with the previous definition of digital platform service is that it is too broad, an alternative would be to include specific services in the definition. Under that alternative option (which is not Free TV's preferred option), the Committee could seek to expand the application of the minimum standards to a broader set of services, including:

- the designated digital platform services, expanded as we have outlined earlier in this submission;
- YouTube; and
- to the extent not covered within the Facebook and Instagram designated digital platform services, Facebook Watch, Instagram TV (IGTV) and Instagram Reels.

## 9.2 User comments – requirement to provide moderation tools needs to be reinstated

Section 52S of the initial exposure draft of the bill required that, on application, platforms must make available content moderation tools that allowed news media businesses to remove or filter user comments made on news media content using a digital platform service. This included being able to disable or block the making of comments. However, the Bill as introduced omits these provisions.

We consider that the requirement on the digital platforms to provide effective user comment moderation tools to be an important aspect of the Code, that is necessary to ensure that media businesses are able to comply with their legal obligations and appropriately manage their liability.

The Mandatory Code is the appropriate mechanism to use to address this issue as it relates to the provision of tools that are being withheld by the dominant platforms that would otherwise be readily provided in a competitive market.

The importance of this was most recently demonstrated by the defamation case involving Voller (Fairfax Media Publications; Nationwide News Pty Ltd; Australian News Channel Pty Ltd v Voller [2020] NSWCA 102), where media companies were held to be responsible for the defamatory comments posted on their social media pages by third parties.

Free TV's members do not believe the defamation reform process that is currently underway through the Attorney-General's Department, and which requires legislative reform by each Australian State and Territory, is an appropriate avenue to resolve this issue. This issue it is not a question of legal liability or law reform. Rather this concerns news media businesses seeking access to tools to manage their own liability that has been found to exist in recent Court decisions. Further, the solution provided by the proposed section 52S would be simpler, more straight forward and significantly quicker to implement than defamation law reform.

Given that Australian media companies do not have any leverage to require the platforms to provide appropriate moderation tools, and the fact that the digital platforms have to date refused to provide these voluntarily, this is an appropriate matter to be addressed in the Code.

## 9.3 Notification of algorithm changes

A final comment should be made in relation to Google's complaints that it will need to stop updating its Google search algorithms if the Code is enacted, on the basis that it cannot comply with the algorithm change notifications requirements contained in the Code. The algorithm changes required to be notified under the Code are very limited – only changes that are made for particular dominant purposes and which will have defined significant relevant effects, such as a significant effect on referral traffic, are required to be notified. As a well-managed business, Google should have no difficulties in identifying those algorithm changes and providing the required notifications.

Google has also complained that these algorithm change notification requirements will provide preferential treatment to registered media companies. This is not a necessary outcome of the Code – each platform could voluntarily make publicly available the notifications that it will be required to give under the Code. This would provide a welcome level of transparency in relation to the practices of the platforms.

## 9.4 Recommended changes

It is recommended that the Committee seek the following changes to the Bill:

- The insertion of a definition of digital platform service as follows:

  A service is a ***digital platform service*** of a designated digital platform corporation if:

  (a) the designated digital platform corporation, either by itself or together with one or more related bodies corporate of the corporation, operates or controls the service; or

(b) a related body corporate of the designated digital platform corporation, either by itself or together with one or more other related bodies corporate of the corporation, operates or controls the service.

- Section 52Q is replaced with the following:

(1) The provisions of Subdivisions B and C create obligations in respect of every digital platform service, in respect of each registered news business corporation and that registered news business corporation's covered news content.

(2) If there is more than one responsible digital platform corporation for the digital platform service:

(a) those obligations are placed on each of those responsible digital platform corporations separately; and

(b) treat references in Subdivisions B and C to the responsible digital platform corporation for the digital platform service as being references to each responsible digital platform corporation for the digital platform service.

- Include the following in Division 4, as a new Subdivision E:

**User Comments**

(1) The responsible digital platform corporation for a digital platform service must make available content moderation tools that allows the registered news business corporation to, if it determines that it wishes to do so:

(a) remove or filter comments on the registered news business corporation's covered news content that:

(i) are made using the digital platform service; and

(ii) are made on a part of the digital platform service that is set up and able to be edited by the registered news business corporation;

(b) disable the making of such comments;

(c) block the making of such comments:

(i) by all persons or by particular classes of persons; and/or

(ii) in particular circumstances;

(d) prevent sharing of the registered news business corporation's covered news content by users of the digital platform service; and

(e) prevent individuals from being tagged in comments made regarding the registered news business corporation's covered news content.

(2) The tools made available under subsection (1) must also enable the registered news business corporation to receive notification when a user reports a comment on the registered news business corporation's covered news content.

(3) The responsible digital platform corporation for a digital platform service must comply with subsection (1) no later than 28 days after the day on which the registered news business corporation was registered under section 52G.

(4) The responsible digital platform corporation for a digital platform service must not impose any fees or charges on the registered news business corporation for the provision of the content moderation tool under subsection (1).